

DATE ISSUED: July 23, 2004

Report No. RTK- 1

ATTENTION: Rules, Finance and Intergovernmental Relations Committee

SUBJECT: Right To Know Committee Recommendations

SUMMARY

The purpose of this report is to outline the recommendations made by the Right To Know Committee to create more open government in San Diego.

Issues- Should the Rules, Finance and Intergovernmental Relations Committee adopt and forward the recommendations of the Right To Know Committee to the full City Council for adoption?

Right To Know Committee Recommendation: The Right To Know Committee recommends adoption of items 1-7.

BACKGROUND

The Right To Know (RTK) Committee was created on March 29, 2004 by the City Council to draft a new permanent rule of the City Council to address the noticing and conduct of closed session meetings. The RTK Committee was directed to forward the proposal and recommendations to the Rules, Finance and Intergovernmental Relations Committee for discussion before the proposed permanent rule was voted on by the full City Council.

Aside from the permanent rule, the RTK Committee was also to discuss and make recommendations regarding the following topics: serial meetings; non-agenda public comment; the public's ability to obtain documents; noticing of meetings, and Brown Act compliance of City of San Diego boards, commissions, and committees.

DISCUSSION

The RTK Committee discussed and made recommendations on the following items. This section will discuss each topic and provide the recommendation by the RTK Committee.

1. Final adoption of the San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings for consideration by the Rules, Finance and Intergovernmental Relations Committee

Issue- Shall the Rules, Finance and Intergovernmental Relations Committee recommend that the City Council adopt the San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings as a permanent rule?

The RTK Committee unanimously (3-0) voted to adopt and recommend for consideration as a permanent rule by the Rules, Finance and Intergovernmental Relations Committee the San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings with the caveat that Councilmember Madaffer does not support *Section IV*:

Transcript of Closed Sessions of the temporary rule. See attachment 1 for the San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings.

2. Serial Meetings

Issue- Shall the Rules, Finance and Intergovernmental Relations Committee recommend that the City Council adopt the following changes in the San Diego Municipal Code pertaining to serial meetings?

The issue of including language in the San Diego Municipal Code regarding serial meetings was discussed by the committee. The RTK Committee unanimously (3-0) voted to adopt language from section 54952.2 of the Ralph M. Brown Act to be incorporated into Chapter 2 of the San Diego Municipal Code that would clarify the Brown Act's prohibition of serial meetings. See attachment 2 for recommended language.

3. Non-Agenda Public Comment

Issue- Shall the Rules, Finance and Intergovernmental Relations Committee recommend that the City Council adopt the following changes in the San Diego Municipal Code pertaining to non-agenda public comment policy?

The RTK Committee unanimously (3-0) voted to adopt the proposed language amending Rule 8 (Non-Agenda Public Comment) of the San Diego Municipal Code, Chapter 2, Article 2, Division 1. See attachment 3 for recommended language.

4. Right To Know Committee Regular Meetings

Issue- Shall the Rules, Finance and Intergovernmental Relations Committee recommend that the Right To Know Committee adopt a regular meeting schedule to discuss issues regarding the advancement of open government in San Diego?

The RTK Committee unanimously (3-0) voted to continue meeting as the Right To Know Committee on an as needed basis, but no less than once a year to discuss issues regarding the advancement of open government in San Diego.

5. Public's Ability To Obtain Documents

Issue- Shall the Rules, Finance and Intergovernmental Relations Committee recommend that the City Council adopt the following changes in city procedures pertaining to the public's ability to obtain documents?

The RTK Committee unanimously (2-0) voted to direct the City Clerk's office to enhance sections of the City Clerk's website related to requests for public documents, change the "Date of Request" form to be more specific, add fact sheets about how to file a public records request, post a list of records management liaisons/coordinators on the website

for each city department, board and commission, add informational language to the City Council docket on how to file a public records request, provide a specific timeframe to those who file a public records request as to when the documents requested will be provided, that public documents be made available in a meaningful and understandable way and that documents that are lengthy and/or controversial be distributed one (1) additional week before the City Council meeting that will consider the item.

6. Noticing of Meetings and Supplemental Agenda Items

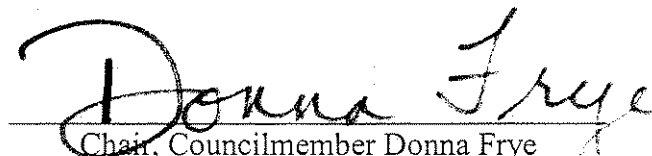
Issue- Shall the Rules, Finance and Intergovernmental Relations Committee recommend that the City Council adopt the following changes in City procedures pertaining to the noticing of meetings and supplemental agenda items?

The RTK Committee unanimously (2-0) voted to direct the City Clerk to include a section on the fourteen-seventy-two form (the document required to be submitted to the City Clerk by a City department for an issue to be included on the City Council agenda) and supplemental agenda documents that would provide a concise synopsis explaining why the item was docketed as supplemental and to report back on how to better notice supplemental items to the public and that supplemental items should only be used with the greatest discretion and care and be used only when the normal docketing process cannot be accommodated.

7. Extending the San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings to all Boards and Commissions associated with the City of San Diego

The RTK Committee unanimously (3-0) voted to refer this issue for further research to the City Attorney and City Manager and to return to the RTK Committee no later than six (6) months from June 23, 2004 with a report that includes the following items:

1. Assess the level of responsibility of each board and commission.
2. Determine the costs associated with applying stronger Brown Act requirements.
3. Investigate how more public input from the various boards and commissions can be included in the discussion of this issue.
4. Evaluate extending noticing requirements to ad-hoc committees associated with the City of San Diego.


Chair, Councilmember Donna Frye

ATTACHMENTS:

1. San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings
2. Proposed Changes to the Permanent Rules of Council Regarding Serial Meetings
3. Proposed Changes to the Permanent Rules of Council Regarding Nonagenda Public Comment

San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings

PURPOSE:

The San Diego City Council [City Council] may impose upon itself requirements which allow greater access to its meetings than prescribed by the minimum legal standards set forth in the California Open Meeting Law, commonly known as "the Brown Act" (Cal. Gov't Code §§ 54950-54963). The purpose of this temporary rule is to create an opportunity in the open session portion of the regular meetings of the City Council to enhance public knowledge and to gain public input on matters considered by the City Council in closed sessions.

Further, the temporary rule is to ensure in the interim, and prior to the development and approval of more comprehensive and permanent rules, that the City Council's practices shall exceed the minimal requirements of the Brown Act so that the City Council is not in jeopardy of suffering declaratory or injunctive orders, as in the cases of *Cause v. City of San Diego* and *Shapiro v. City Council of San Diego*.

I. FORM AND MANNER OF NOTICE:

- A. All closed session items shall appear on a Closed Session Agenda or Supplemental Closed Session Agenda, which agenda may be separate and distinct from the City Council's regular meeting agenda, but which shall be made available to the public and distributed concurrent with the regular meeting agenda of the City Council, which shall meet the seventy-two (72) hour public noticing requirement. A line item shall appear on the regular City Council docket indicating that closed session items will be appearing on a separate Closed Session Agenda. The closed session items will be appearing on a separate Closed Session Agenda. The Closed Session Agenda shall clearly indicate the time and place that open session discussion of closed session items is scheduled to occur. Closed Session Agenda shall further indicate the time and place the scheduled closed session will occur.
- B. All closed session agenda items shall contain descriptions which can be easily understood and informative to the public in a meaningful way, unless to do so would harm the City and public interest by disclosing facts that are not known to the adverse party in any litigation or negotiations. Meaningful means: "clear and specific enough to alert a person of average intelligence and education whose interests are affected by the item that he or she may have a reason to attend the meeting or seek more information on the item. The description should be concise and written in plain, easily understood words.

- C. For authorized exceptions to open meetings, the following minimum noticing and disclosure shall apply:

(1) Significant Exposure to Litigation

When a closed session is scheduled under the heading -- significant exposure to litigation -- unless the facts and circumstances creating the threat of litigation are not yet known to the likely plaintiffs, such facts and circumstances must be made known to the public. Supplemental oral or written announcements shall be made in the following circumstances:

- (a) There has been no communication yet from the foreseeable plaintiffs but the City is aware of circumstances likely to prompt a litigation threat -- for example, an accident, disaster, incident, or transactional dispute; in such instances the circumstances shall be stated on the agenda known at the time of its 72-hour advance posting or announced prior to the closed session if not.
- (b) If a claim or some other written threat of litigation has been received, the document is a public record and a copy shall be attached to the agenda if known at the time of its 72-hour advance posting or announced and distributed to those requesting a copy prior to the closed session if not.
- (c) When the closed session is deemed to be justified by a litigation threat made in an open and public meeting, reference to the statement shall be publicly stated on the agenda if known at the time of its 72-hour advance posting or announced prior to the closed session if not.
- (d) When an oral threat of litigation is made outside a meeting, it may not be made the basis of a closed session unless the official who heard it has made a memo explaining what was and by whom. A copy of the memo shall be attached to the agenda if the threat is known at the time of its 72-hour advance posting or announced and distributed prior to the closed session if not.

(2) Conference with Real Property Negotiators

Property: Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(3) Conference with Legal Counsel – Existing Litigation

Name of case: (Specify by reference to claimant's name, names of parties, case, or claim numbers)

Or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

- D. In open session, before public comment or City Council discussion of any closed session item, the City Attorney or appropriate staff shall provide an oral update or progress report on matters under litigation, real property negotiations, or employee unit bargaining.

II. PUBLIC PARTICIPATION:

The public shall have the opportunity to directly address the City Council on any closed session item on the agenda, prior to City Council questions and discussion on the item and after the oral report by the City Attorney or appropriate staff.

III. COUNCIL QUESTIONS AND DISCUSSION IN OPEN SESSION:

At the regular or special meeting of the City Council, the Mayor and Councilmembers shall have the opportunity to discuss the basis for convening into closed session, ask questions and respond to questions from the public.

IV. TRANSCRIPTION OF CLOSED SESSIONS:

All closed sessions shall be transcribed by a court certified reporter. All transcripts shall be retained.

V. REPORTING OF CLOSED SESSION RESULTS IN OPEN SESSION:

- A. After every closed session, if a public report of any final action taken in closed session is required as set forth herein, the Mayor and City Council shall adjourn from closed session, reconvene in open session, and publicly report such final action and the vote or abstention of every member present as follows:
- (1) Approval of an agreement concluding real estate negotiations pursuant to California Government Code section 54956.8 shall be reported after the agreement is final, as specified below:
 - (a) If the Mayor and City Council's own approval renders the agreement final, they shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.
 - (b) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.
 - (2) Approval given to the City's legal counsel to defend, or seek, or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under California Government Code section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.
 - (3) Approval given to its legal counsel of a settlement of pending litigation, as defined in California Government Code section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

- (a) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.
 - (b) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.
- (4) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to California Government Code section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the non-renewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.
 - (5) Approval of an agreement concluding labor negotiations with represented employees pursuant to California Government Code section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.
- B. Reports that are required to be made pursuant to this section may be made orally or in writing. The City shall provide to any person who has submitted a written request to the City within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to California Government Code sections 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that an oral summation of the substance of the amendments has been made for the benefit of the document requester or any other person present and requesting the information.

- C. The documentation referred to in paragraph (B) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.
- D. Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

VI. LITIGATION LOG:

The City Attorney, in coordination with the City Clerk, shall provide to the Mayor and City Council a weekly listing of all litigation filed against or by the City of San Diego, its officers or employees, and any City boards, redevelopment agencies, and commissions, etc. (collectively "the City") that has been served upon the City. The list shall include the court in which the case was filed, the name of the litigants, the date filed, and the Court case number. A copy of the list shall be kept on file in the Office of the City Clerk and available for members of the public. The list shall be provided every week, and shall report on cases served the immediate succeeding week.

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: June 22, 2004

TO: Right to Know Committee
Deputy Mayor Toni Atkins
Councilmember Donna Frye
Councilmember Jim Madaffer

FROM: City Attorney

SUBJECT: Proposed Changes to Permanent Rules of Council Regarding Serial Meetings and Nonagenda Public Comment

At the June 16, 2004 meeting of the Right to Know Committee, the Committee directed this Office to draft the following changes to the Permanent Rules of Council, for final approval at the Committee's meeting on June 23, 2004. The changes are indicated using strikeout for language that is being deleted, and underscoring for language that is being added.

Serial Meetings

A new subsection (h) to Rule 1 has been proposed, which would incorporate language from the Brown Act, California Government Code section 54952.2(b) as follows:

Rule 1 Hours of Meetings

- (h) Except as authorized pursuant to California Government Code Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.

Nonagenda Public Comment

The following changes to Rule 8 have been proposed:

Rule 8. Nonagenda Public Comment

(a) Every agenda for a regular Council meeting shall provide a period on the agenda for members of the public to address the Council on items of interest to the public that are not on the agenda but are within the jurisdiction of the Council. Subject to the exercise of the Mayor's discretion for a given agenda, Nonagenda Public Comment shall be docketed for 10:00 a.m. on the Tuesday morning portion of the agenda.

~~(b) Notwithstanding the above, no speaker shall be heard on any item that has already been considered by a Council Committee where members of the public were permitted to be heard on the item unless the Council determines by majority vote that the item has substantially changed since committee consideration.~~

(c) Speakers shall be limited to three (3) minutes each and comments shall be limited to three (3) minutes per subject regardless of the number of people in attendance. Anyone desiring to speak shall reserve time at the meeting by filing a written request with the Clerk. Speakers will be called in the order reserved within the available time.

(d) Each person desiring to address the Council shall approach the podium, state his/her name and address for the record, state the subject he/she wishes to discuss, and state who he/she is representing if he/she represents an organization or other persons. ~~All remarks shall be addressed to the Council as a whole and not to any member thereof.~~ The presiding officer shall not permit any communication, oral or written, to be made or read where it does not bear on something of interest to the public which is within the subject matter jurisdiction of the Council. However, the presiding officer shall not prohibit public criticism of the policies, procedures, programs or services of the City, or of the acts or omissions of the Council, or individual Councilmembers as it relates to the performance of his or her duties as a Councilmember. The presiding officer shall not prohibit public comment because of disagreement with the speaker's position or view on any matter within the jurisdiction of the Council.

(e) No discussion or action on any matter of nonagenda public comment shall be permitted. The Presiding Officer may allow staff and/or members of the Council to briefly respond, however, responses shall be limited to the specific issue raised by the speaker and shall generally be limited to information helpful to the public's understanding of the issue(s) raised by the speaker. The Council shall not take action relative to any public comment unless an action would be authorized by Section 54954.2(b) of the California Government Code. Any matter properly raised under this rule may, if appropriate, be referred by the Chair to the Rules Committee Consultant for appropriate action.

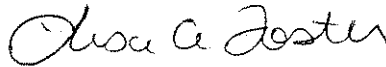
Right to Know Committee
June 22, 2004
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Rule 8.1. Public Conduct

Notwithstanding any other provision of law, no person shall cause any disruption of these proceedings a Council meeting by loud, ~~offensive, boisterous or tumultuous~~ threatening or obscene conduct. Any person who engages in such conduct that disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting shall, at the discretion of the presiding officer, be barred from further audience before the Council during that meeting. Any person having been ruled out of order by the presiding officer shall immediately conform to the orders of the presiding officer. Any person who refuses when ordered to conform to the rules of conduct may be removed from the place of the Council meeting by order of the presiding officer.

CASEY GWINN, City Attorney

By



Lisa A. Foster
Deputy City Attorney

LAF:jab

Office of
The City Attorney
City of San Diego

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CASEY GWINN, City Attorney

By



Lisa A. Foster
Deputy City Attorney

LAF:jab